SUPREME COURT OF THE UNITED STATES.

NO. 148

GEO. DIAL, et al., Complainants,

vs.

ROBERT B. REYNOLDS, et al., Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF EAST TENNESSEE—IN CHANCERY.

BRIEF FOR COMPLAINANTS.

"WHIG AND CHRONICLE" STEAM PRINT, KNOXVILLE.

SUPREME COURT OF THE UNITED STATES.

No. 148.

GEO. W. DIAL, et al., Complainants,

vs.

ROBERT B. REYNOLDS, et al., Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF EAST TENNESSEE—IN CHANCERY.

BRIEF FOR COMPLAINANTS.

THE original bill in this cause was filed September 12, 1871, by John Lyford and Daniel H. Startsman, citizens of the State of Ohio, against Robert B. Reynolds and Joseph A. Cooper, citizens of Tennessee, for the purpose of clearing the title of a tract of land in Knox county, Tennessee, from the cloud of an illegal claim set up against it by the defendant Reynolds.

The original bill alleges that the defendant Cooper, on the 12th day of May, 1871, for the purpose of securing a debt due to the complainant Startsman, and, for the further purpose of securing certain sureties upon the official bond of said Cooper as Collector of Internal Revenue, made a deed

of trust of said lands to the complainant Lyford, with covenants of warranty and power of sale, and that said Cooper was in actual possession of said premises as tenant of said Lyford; that the defendant Reynolds claimed title to said premises adversely to the title of complainant Lyford; that said Reynolds had theretofore brought an action of ejectment against said Cooper in the Circuit Court of the United States for the District of East Tennessee, which action having been lately pending in the Supreme Court of the United States, was there decided in favor of said Cooper and remanded to said Circuit Court, and that Reynolds had disinissed said suit in said Circuit Court, but still persisted in making and proclaiming his wrongful claim to said premises. (The said cause in this Court is reported under the title of Cooper vs. Reynolds, 10 Wall., 308).

A supplemental bill was filed November 21, 1871, by Geo. W. Dial and Daniel H. Startsman, alleging that, after the filing of the original bill, the complainant Lyford had resigned his position as trustee under said deed of trust, and that said Dial had, by the County Court of Knox county, Tennessee, been appointed trustee in his stead.

A demurrer was filed by defendant Reynolds at this stage of the cause (Record, folio 25), which was sustained by the Court, and the bill amended so as to show in detail that the complainant's title was derived through legal proceedings under which the land had been sold as the property of the defendant Reynolds, and alleging that, since the filing of the original bill, the defendant Reynolds had brought a suit in ejectment against said Cooper for said premises in the State Court. (Record, folio 19).

On the 18th day of July, 1874, an amended bill was filed against the same defendants, and also against the beneficiaries in the deed of trust, making substantially the same allegations which were in the original and supplemental bills, and praying for a foreclosure of the deed of trust, and for sale of the premises, for a removal of the cloud of the

title claimed by defendant Reynolds, and that he might be enjoined from prosecuting his ejectment suit against Cooper in the State Court, and for general relief.

To this amended bill a demurrer was filed by defendant Reynolds (Record, folio 42), which demurrer was sustained by the Court, and the bill dismissed (Record, folio 44); from which decree of dismissal the complainants appealed to this Court.

I.

The first ground of demurrer stated is that there is no equity in the bill.

This hardly requires an answer. The removal of clouds from titles to land is an old and well-settled head of equity jurisdiction, in cases where, as in the present one, the complainant is in possession, and, therefore, can not bring ejectment to try his title.

2 Story, Eq. Jur., §§ 699—705.
Ward vs. Chamberlain, 2 Hoisk., 445.
Parker vs. Overman, 18 How., 140.
Almony vs. Hicks, 2 Head., 26.
Anderson vs. Talbot, 1 Hoisk. (Tenn.), 492.

And this jurisdiction is expressly recognised as an existing one by the Act of March 3, 1875, § 8, 18 Statutes at Large, p. 472.

II.

The second ground of demurrer alleged is that the Court has no jurisdiction to enjoin the defendant from prosecuting his action of ejectment and to settle the title to the land sued for.

The last clause of this double objection is answered in Paragraph I. above. The ejectment suit mentioned was commenced after the original bill was filed in this cause. (Record, folio 21).

To the objection that the Court had no jurisdiction to grant the injunction prayed for by the bill we answer :

The demurrer for this cause, being to the whole bill, is too broad, and must be overruled.

Story, Eq. Pl., § 443.
1 Dan., Ch. Pr., 603.
Colville vs. Colville, 9 Humph., 527.
Fay vs. Jones, 1 Head., 443.

And the relief by injunction is purely ancillary, and not material to the main purpose of the bill.

III.

The third ground of demurrer alleged is substantially the same as the first, and has been answered above. The bill shows that the complainant Dial has the legal title to the land in controversy, that he is in possession, and that defendant Reynolds creates a cloud upon his title by the as-

sertion of an invalid claim, which can only be removed by the interposition of a Court of Equity.

IV.

The fourth ground of demurrer is that the alleged proceeding in the County Court did not clothe the complainant Dial with the legal title, the County Court not having jurisdiction to divest and vest the title.

This proceeding is provided for and regulated by the Code of Tennessee, by the following Sections and others in the same connection:

Section 3648. "The Chancery, Circuit and County Courts have concurrent jurisdiction to accept the resignation of trustees or to remove and appoint trustees under the provisions of this chapter."

Section 3661. "In all cases of the resignation or removal of trustees, or where they fail or refuse to act, the Court may appoint a successor, taking, whenever it is proper to require it, bond and security as in the last section."

Section 3662. "The Court shall divest and vest title to the property, enforce the delivery thereof to the new trustee, and the payment of money found due upon statement of accounts according to the course of the Chancery Court."

The supplemental bill (folio 19) alleges that the legal estate was vested in Dial, and this would result from the mere fact of his appointment as trustee in place of Lyford, the former trustee, even without a formal decree to that effect.

Wooldridge vs. Planter's Bank, 1 Sneed, 301.

V.

The fifth ground of demurrer is that the bill is multifarious; the relief sought against the other parties, co-defendants with defendant Reynolds, being upon matters wholly distinct from the claim of title of defendant Reynolds, and with which he has no connection.

To this we reply:—

1st. That the other defendants are Cooper, the maker of the deed of trust, and the several beneficiaries under the deed, all of whom are directly interested in the land conveyed, and in the removal of the cloud from the title thereof, and are proper parties to a bill filed for the purpose of removing such cloud; and, so far as the bill is filed for that purpose, the relief prayed against the defendant Reynolds and all the other defendants is the same; and it is not true, as alleged by the demurrer, that the relief sought against the other defendants is "upon matters wholly distinct from the claim of title of this defendant" Reynolds.

It is true that the amended bill also prays for a foreclosure of the deed of trust, in which prayer defendant Reynolds may have no interest; but the bill was properly filed against him and the other defendants for the purpose of removing the cloud, and the fact that complainants are entitled to, and pray for, further relief against the other defendants than they are entitled to against him, does not enable him to demur to the whole bill as multifarious.

Story, Eq. Pl., § 271, a.

All the allegations in the amended bill were necessary and proper for the main purpose of the bill—that of removing the cloud from the title; and, even if some of the

defendants were not necessary or proper parties, the defendant Reynolds could not demur on account of their being made parties.

Story, Eq. Pl., § 544.
N. Y., &c., R. M. vs. Schuyler, 17 N. Y., 592.

"Where the plaintiffs have a common interest against all the defendants in a suit as to one or more of the questions raised by it, so as to make them all necessary parties for the purpose of enforcing that common interest, the circumstance of some of the defendants being subject to distinct liabilities in respect to different branches of the subject matter will not render the bill multifarious."

1 Dan., Ch. Pr., 345.

If the other defendants could have objected to the insertion in the bill of the prayer for foreclosure, it is a prayer which does not affect the defendant Reynolds, and which he has no right to object to.

It was obviously impossible for the trustee to make an effective disposition of the property for the purposes of the trust while the cloud of Reynolds' claim hung over it, and it would have been improper for him to have attempted it.

Peck vs. Peck, 9 Yerg., 204.

And no reason is apparent, Cooper being already a party to the suit for the purpose of removing the cloud, why the bill should not go on to pray the relief against him to which the complainants were entitled, the cloud being removed. It is "the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of a suit; to make the performance of the order perfectly safe to those who obey it, and to prevent future litigation."

Caldwell vs. Taggart, 4 Pet., 202.

Defendant Cooper, being already a party, and a proper party, for the purpose of removing the cloud; if the defendant Reynolds conceived that the prayer for a foreclosure was improper, he should have demurred to that prayer only, and not to the whole bill.

J. M. THORNBURGH,
For Complainants.

TRANSCRIPT OF R[illegible]

SUPREME COURT OF THE UNITED S[illegible]

No. 148.

GEORGE W. DIAL AND DANIEL H. STA[illegible] ET AL.,
LANTS,

vs.

ROBERT B. REYNOLDS, JOSEPH A. COOPER, AND [illegible]
HAMBRIGHT ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 4, 187[illegible].

SUPREME COURT OF THE UNITED STATES.

No. 148.

GEORGE W. DIAL AND DANIEL H. STAATSMAN, APPELLANTS,

vs.

ROBERT B. REYNOLDS, JOSEPH A. COOPER, AND JOHN HAMBRIGHT ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Caption	1	1
Prosecution-bond	1	1
Original bill	1	1
Exhibit A to original bill	8	3
Summons	14	6
Prosecution-bond for supplemental bill	15	6
Supplemental bill	16	7
Amendment to supplemental bill	19	8
Summons	22	9
Motion entered to dismiss bill	24	10
Motion to dismiss bill withdrawn	24	10
Demurrer	25	10
Entry sustaining demurrer and granting leave to amend bill	26	11
Demurrer to supplemental bill	27	11
Time granted to file an amended bill	29	12
Time granted to file an amended bill	29	12
Time for filing amended bill extended	30	13
Prosecution-bond for amended bill	30	13
Amended bill	31	13
Subpœna to answer	39	16
Defendants enter appearance to amended bill	41	17
Demurrer	41	17
Entry sustaining demurrers and dismissing bills and appeal to the United States Supreme Court	34	18
Appeal-bond	46	19
Certificate	47	20

1 Transcript of the record and proceedings in a cause lately determined in the United States circuit court for the district of East Tennessee, wherein John Lyford and Daniel H. Startsman are complainants, and Robert B. Reynolds and Joseph A. Cooper are defendants.

Prosecution-bond.

Know all men by these presents that we, John H. Lyford, Daniel H. Startsman, and , are jointly and severally held and firmly bound unto Robert B. Reynolds & Joseph A. Cooper in the penal sum of two hundred & fifty dollars, to be void in condition that the said Lyford and Startsman do, with effect, prosecute a bill in equity this day filed against the said Reynolds & Cooper, in the circuit court of the United States for the district of East Tennessee, otherwise to pay and satisfy all costs and damages that may be awarded for failure.

Witness our hands and seals this 12 day of Sept., 1871.

Attest:

JOHN H. LYFORD, [SEAL.]
Per GEO. ANDREWS, *Att'y.*
DANIEL H. STARTSMAN, [SEAL.]
Per GEO. ANDREWS, *Atty.*
SAMUEL L. GILSON. [SEAL.]

(Endorsed:) 456. Prosecution-bond. Jno. Lyford et al. vs. R. B. Reynolds et al. Filed Sept. 12, 1871. H. M. Aiken, clerk.

Original bill.

UNITED STATES OF AMERICA:

2 To the judges of the circuit court of the United States for the district of East Tennessee:

Your orators, John Lyford and Daniel H. Startsman, of the city of Cincinnati, in the State of Ohio, and who are citizens of the State of Ohio, bring this, their bill, against Robert B. Reynolds and Joseph A. Cooper, of Knox County, Tennessee, and who are citizens of the State of Tennessee; and thereupon your orators complain and say:

That heretofore, to wit, on the 12th day of May, 1871, the above-named Joseph A. Cooper was indebted to the complainant, Startsman, in the sum of one thousand dollars, due by promissory note made by the said Cooper, bearing date the 11th day of May, 1871, and payable to the order of the said Daniel H. Startsman one day after date.

Before that time, and in or about the month of May, 1869, the said Joseph A. Cooper had been duly appointed collector of internal revenue of the United States for the second district of Tennessee, and had qualified as such collector by giving bond in the penalty of one hundred thousand dollars to the United States for the true and faithful execution and discharge of the duties of said office by him and by his deputies, which bond was also executed and delivered by Thomas O.

3 Traynor, Charles Nelson, Adolph Nelson, John Hambright, and Alfred McConnell, all of whom are citizens of the State of Tennessee, as the securities of the said Joseph A. Cooper. Said bond is still in full force and held by the United States as indemnity against any wrongful act, or default, or failure of the said Cooper as such collector as aforesaid, who is still holding and discharging the duties of said office.

On the 12th day of May, 1871, the said Joseph A. Cooper, for the purpose of securing the said debt due to the complainant, Daniel H. Startsman, as aforesaid, and for the purpose of securing and indemnifying the said Thomas O. Traynor, Charles Nelson, Adolph Nelson, John Hambright, and Alfred McConnell, for and against their said liability on his official bond aforesaid, executed and delivered to your orator, John Lyford, a deed of trust whereby he conveyed to said complainant, John Lyford, in trust for the purposes aforesaid, as more specifically set forth in said deed, a copy of which is hereto annexed, marked "Exhibit A," and to which your orators crave leave to refer, all that certain piece or parcel of land, with the appurtenances, situated in the 12th civil district of Knox County, Tennessee, being within the limits of what is known as the Virgin Spring survey, and described and bounded as follows, to wit: Beginning at a stake in the south side line of the Virgin Spring survey, near to Baker's spring, being the second corner to a tract of land heretofore conveyed to Mary J. Helms;
4 thence north sixty degrees east along said south line to the second corner of the land heretofore conveyed to Rebecca J. Reynolds; thence north thirty degrees west one hundred and sixty poles to a stake, third corner of Rebecca J. Reynolds' land; thence south sixty degrees west to the third corner of the land heretofore conveyed to Mary J. Helms; thence south sixty degrees east one hundred and sixty poles to the beginning; being a part of the tract of land formerly owned by John Reynolds, deceased, and the same tract afterwards owned by Robert B. Reynolds, & being the same tract of land on which the said Joseph A. Cooper now resides. Said deed of trust was, on the 13th day of May, 1871, duly registered in the register's office for Knox County aforesaid.

In and by said deed said Joseph A. Cooper covenanted to and with the complainant, John Lyford, that he was well seized of the above-described premises in fee simple; that the same were free from all incumbrances, and that the said premises, in the quiet and peaceable possession of said Lyford, his heirs and assigns, he would warrant and defend against the lawful claims of all persons whomsoever.

By said deed of trust it is made the duty of the complainant, John Lyford, as trustee, in case the said debt to said Startsman should
5 not be paid on or before the first day of August, 1871, or in case any liability should be thereafter fixed and ascertained in favor of the United States against the said securities, or either of them, upon said bond, or in case the said securities, or either of them, should be put to any expense, or should be required to make any payment, or should sustain any loss, costs, or damage, on account of their said suretyship, then, at the request of the said Startsman or his representatives, or at the request of the said securities, or of either of them, to sell the said premises at public sale and to dispose of the proceeds thereof for the purposes of the trust aforesaid, in the manner declared by said deed, to which your orators crave leave to refer; your orator, Daniel H. Startsman, being preferred in said deed to the said securities.

The said debt due from the said Cooper to your orator, Startsman, is now due and wholly unpaid, with interest, and the said Startsman is now entitled to have the premises above-described sold, and the trusts of said deed in his favor executed for the payment of his said debt.

Your orators are informed and believe that the said Robert R. Reynolds claims to have some right, title, or interest in said premises adverse to the title of your orator, John Lyford, as trustee as aforesaid,

and that he proclaims and gives out openly that he is the lawful owner of said premises.

6 Your orators charge that the said claim of title of the said Reynolds is invalid; that he has no right, title, or interest in or to the said premises, or any part thereof, and that he is not the lawful owner of said premises, or any part thereof, or of any interest therein.

Your orators charge that the said claim of title set up by said Reynolds is a cloud upon the title of your orator John Lyford, as trustee aforesaid; that it will prevent your orator, the said trustee, making sale of said premises as trustee for the full value thereof, and from securing and indemnifying the beneficiaries named in said deed of trust as he is therein and thereby directed to do.

The said Robert B. Reynolds, on or about the 9th day of April, 1866, commenced an action of ejectment against said Joseph A. Cooper in this honorable circuit court, on the law side thereof, which said action was lately pending in the Supreme Court of the United States and was there decided in favor of the said Cooper, and remanded to this honorable court; and the said Reynolds has since that time dismissed said ejectment suit, but still persists in making and proclaiming his said wrongful claim to said premises.

7 The said Joseph Cooper is now in the actual possession of the premises aforesaid, as the tenant of orator John Lyford, the trustee aforesaid, and your said orator holding the possession of said premises by his said tenant cannot try the title to said premises at law.

Your orators pray that the said Robert B. Reynolds and Joseph A. Cooper may be made parties defendant to this bill, and that a writ of subpœna may issue commanding them to appear and make defence thereto; that the title of your orator John Lyford, trustee as aforesaid, may be set up and established in and to said premises; and that the said Robert B. Reynolds may be decreed to have no right, title, or interest therein, and that he be forever restrained and enjoined by the decree of this honorable court from setting up or claiming his said pretended title to said premises against the title of your orator John Lyford, or of any one claiming through or under him; that in case the decree of this honorable court should be against the validity of the title of your orator John Lyford, as trustee as aforesaid, then that your said orator may have a decree against said Joseph A. Cooper for the amount for which he may be liable upon his covenants of warranty contained in said deed.

And that your orators may have such other and further relief as their case shall require, and to the court shall seem meet, and your

8 orators shall ever pray, &c.

GEO. ANDREWS,
L. C. HOUKE,
Sol'rs for Compl't.

THO'S E. CHAMPION,
Of Counsel.

EXHIBIT A.

This indenture, made this 12 day of May, 1871, between Joseph A. Cooper, of the county of Knox and State of Tennessee, of the first part, and John Lyford, of the city of Cincinnati, in the State of Ohio, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the

sum of five dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and in further consideration of the several matters hereinafter recited has this day granted, bargained, sold, aliened, released, remised, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land with the appurtenances, situated in the 12 civil district of Knox County aforesaid, being within the limits of what is known as the Virgin Spring survey, and described and bounded as follows: Beginning at a stake in
9 the south side line of the Virgin Spring survey, near to Baker's Spring, being the second corner to a tract of land heretofore conveyed to Mary J. Helms; thence north sixty degrees east along said south line to the second corner of the land heretofore conveyed to Rebecca J. Reynolds; thence north thirty degrees west one hundred and sixty (160) poles to a stake, third corner of Rebecca J. Reynolds' land; thence south sixty degrees west to the third corner of the land heretofore conveyed to Mary J. Helms; thence south sixty degrees east one hundred and sixty (160) poles to the beginning, being a part of the tract of land formerly owned by John Reynolds, deceased, and the same tract afterwards owned by Robert B. Reynolds, to have and to hold the above granted premises, with the appurtenances to the said party of the second part, his heirs and assigns forever; but in trust nevertheless, and to and for the uses, intents, and purposes following, that is to say, whereas the said party of the first part is indebted to Daniel H. Startsman, of the city of Cincinnati, in the State of Ohio, in the sum of one thousand dollars, due by note made by said party of the first part, bearing date the 11 day of May, 1871, and payable to the order of Daniel H. Startsman, one day after date.

And whereas, also, the said party of the first part has heretofore been appointed collector of internal revenue of the United States
10 in and for the second district of Tennessee, and is now discharging the duties of said office, and as such collector did, in or about the month of May, 1869, enter into bond with security to the United States in the penal sum of one hundred thousand dollars, conditioned for the true and faithful execution and discharge of all the duties of said office according to law. And whereas Tho's O. Traynor, Charles Nelson, and Adolph Nelson, of Davidson County, Tennessee, John Hambright, of Bradley County, Tennessee, and Alfred McConnell, of Blount County, Tennessee, have joined in and executed said bond with the said party of the first part as his sureties in the penalty aforesaid:

Now, therefore, the said party of the second part shall hold the premises above granted and described in trust to secure the debt due to said Daniel H. Startsman as aforesaid, and to secure and indemnify the said Thomas O. Traynor, Charles Nelson, Adolph Nelson, John Hambright, and Alfred McConnell against all loss, costs, damages, expense, and liability by reason or on account of their said suretyship as aforesaid, and it shall be the duty of said trustee, the said party of the second part, in case the said debt to said Daniel H. Startsman is not paid in or before the first day of August, 1871, or in case any liability shall
11 be hereafter fixed and ascertained in favor of the United States against the securities above named upon the bond aforesaid, or either of them, for or on account of any wrongful act or default of the said party of the first part as such collector as aforesaid, or in case the said securities or either of them shall be put to any expense, or shall be required to make any payment, or shall sustain any loss, costs, or dam-

age on account of their said suretyship, then at the request of the said Daniel H. Startsman, or his representatives, or at the request of the said securities or of either of them, the said trustee shall sell said premises above granted and described, with the appurtenances, at public sale on said premises, giving thirty days' notice thereof by written notice posted at the door of the court-house in Knoxville; and in case said premises shall be sold by said trustee, he shall, out of the proceeds thereof—

First. Pay and discharge all the costs and expenses of the sale and of this trust.

Secondly. He shall, out of such proceeds, pay and satisfy in full the said debt due to said Daniel H. Startsman.

Thirdly. He shall hold the surplus, if any, so long as may be necessary, in trust, to secure, indemnify, and save harmless the above-named securities on the official bond of the said party of the first part, and to pay, satisfy, and discharge all debts, damages, costs, expenses, and
12 liabilities that may accrue against or be sustained by said securities, or either of them, on account or by reason of their said suretyship.

Fourthly. After the full performance, fulfilment, and satisfaction of the trusts above mentioned, the said trustee shall pay the surplus, if any, to the said party of the first part, his executors, administrators, or assigns. The said party of the first part hereby waives and surrenders the right of redemption in and to the above-described premises, and agrees that, in case the said premises shall be sold by said trustee, the same shall be held by the purchaser free from, and in bar of, all right or equity of redemption on the part of the said party of the first part or of any person.

And said party of the first part hereby agrees, during the continuance of the trust hereby created, to hold the above-described premises of and from the said party of the second part as landlord as a tenant at will, yielding and paying to the said party of the second part for said premises during said tenancy the annual rent of three hundred dollars, to be expended in the maintenance and improvement of said premises, for the benefit of said trust, and for the better security and indemnification of the said securities of the party of the first part upon
13 said bond; and that he will at any time, upon demand of the said party of the second part, without notice, yield and surrender to him the possession of said premises. And the said party of the first part hereby covenants to and with the said party of the second part that he is well seized of the above granted and described premises, in fee-simple; that they are free from all incumbrances; and that the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, he will forever warrant and defend against the lawful claims of all persons whomsoever.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year first above written.

(Signed) JOSEPH A. COOPER. [L. S.]

Signed and delivered in the presence of—
GEO. W. ROSS &
B. P. STACEY.

STATE OF TENNESSEE,
Knox County:

Personally appeared before me, clerk of the county court of said county, the within-named bargainor, with whom I am personally ac-

quainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

14 Witness my hand, at office, this 12 day of May, 1871.

(Signed) J. S. A. BLANG, *Clerk.*

(Endorsed:) 456. Circuit court of U. S. In chancery. John Lyford et al. vs. Rob't B. Reynolds et al. Bill filed Sept. 12, 1871, 9.45 a. m. H. M. Aiken, clerk.

Summons.

The President of the United States of America to the marshal of the eastern district of Tennessee:

You are hereby commanded to summon Robert B. Reynolds and Joseph A. Cooper, if they be found in your district, to be and appear before the judges of the circuit court of the United States in the sixth circuit for the district of East Tennessee, at the court-house in Knoxville, in the said State, on the second Monday in January next, then and there to answer the bill of *of* complaint of John Lyford and Daniel H. Startsman this day filed against them in said court. Herein fail not, and have you then and there this writ.

Witness the honorable Salmon P. Chase, esq., Chief-Justice of the Supreme Court of the United States, this the 2d Monday in July, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the 96th.

H. M. AIKEN, *Clerk.*

15 (Endorsed:) No. 656. John Lyford & Daniel H. Startsman vs. Robert B. Reynolds & Joseph A. Cooper. This summons was issued on the 12' day of September, 1871, H. M. Aiken, clerk. Came to hand same day issued, and executed as to Joseph A. Cooper at 10 a. m. September 12th, 1871, D. M. Boyd, dept. U. S. marshal. Executed as to R. B. Reynolds, and a copy of this writ and a copy bill, Sept. 12, 1871, S. P. Evans, U. S. M. Evans' costs, one summons, $2.00; one copy bill, $2.00; one copy summons, $2.00 = $6.00. Boyd's costs, $6.00. Total, $12.00.

Prosecution-bond.

Know all men by these presents that we, George W. Dial, D. H. Startsman, and Samuel L. Gilson are jointly and severally held and firmly bound unto Robert B. Reynolds and Joseph A. Cooper in the penal sum of two hundred and fifty dollars, to be void on condition that the said Dial & Startsman doth with effect prosecute a suit in equity this day commenced against the said in the circuit court of the United States for the district of East Tennessee, otherwise to pay and satisfy all costs and damages that may be awarded for failure.

Witness our hands and seals this 21' day of Nov., 1871.

Attest:

GEO. W. DIAL. [SEAL.]
D. H. STARTSMAN. [SEAL.]
Per GEO. ANDREWS, *Sol'r.*
SAMUEL L. GILSON. [SEAL.]

(Endorsed:) No. 456. Prosecution-bond for supplemental bill
16 in Dial and Startsman vs. R. B. Reynolds et al. Filed Nov. 21, 1871. H. M. Aiken, clerk.

Supplemental bill.

UNITED STATES OF AMERICA:

To the judges of the circuit court of the United States for the district of East Tennessee.

Your orators, George W. Dial and Daniel H. Startsman, of the city of Cincinnati, in the State of Ohio, and who are citizens of the State of Ohio, bring this day their supplemental bill against Robert B. Reynolds and Joseph A. Cooper, of Knox County, Tennessee, and who are citizens of the State of Tennessee, and thereupon your orators complain and say:

That heretofore, to wit, on the 12th day of September, 1871, your orator, Daniel H. Startsman, together with one John Lyford, filed their joint bill of complaint in this honorable court against the above-named defendants, Robert B. Reynolds and Joseph A. Cooper, in and by which said bill it was alleged that the said John Lyford was the trustee named in a certain deed of trust, a copy of which was exhibited with said bill made by the said Joseph A. Cooper for the benefit of your orator, Daniel H. Startsman, and certain other persons therein named, and conveying to the said John Lyford, as trustee, as aforesaid, a certain
17 tract of land in Knox County, Tennessee, with the appurtenances, being the farm on which said Cooper now resides. It was further alleged in said bill that the said Joseph A. Cooper was in the actual possession of the premises above mentioned as the tenant of said Lyford, and that the defendant, Robert B. Reynolds, claims to have some right, title, or interest in said premises adverse to the title of the said Lyford, as trustee, as aforesaid, and that the said Reynolds proclaims and gives out that he is the lawful owner of said premises; and said bill charged that the said claim of title set up by said Reynolds is invalid, and that the said Reynolds is not the lawful owner of said premises, and has no right, title, or interest therein; and that the said claim of title of the said Reynolds was a cloud upon the title of said Lyford, as trustee, which would prevent him from making sale of said premises for the full value thereof, and from securing and indemnifying the beneficiaries named in said deed of trust, as he is therein and thereby directed to do. The said bill prayed that the title of the said John Lyford, trustee, as aforesaid, might be set up and established in and to said premises, and that the said Robert B. Reynolds might be decreed to have no right, title, or interest therein; and that he might be forever restrained and enjoined from setting up or claiming his said pre-
18 tended title to said premises against the title of said Lyford, or of any one claiming through or under him; that in case the decree of this honorable court should be against the title of said Lyford, then that said Lyford might have a decree against said Joseph A. Cooper for the amount for which he might be liable upon his covenants of warranty contained in said deed, and for such other and further relief as the case of said complainants should require and to the court should seem meet.

Your orators further show that after the filing of said bill, to wit, on the 7th day of November, 1871, the said John Lyford presented to the county court of Knox County, aforesaid, his petition in writing, addressed to said court, wherein and by which he resigned his position as trustee under said deed of trust, and prayed to be discharged therefrom; and thereupon said county court heard and considered said petition, and

with the assent of the several beneficiaries named in said deed of trust, ordered, adjudged, and decreed that said resignation be accepted, and that said Lyford be discharged from said trust; and thereupon the said county court appointed your orator, George W. Dial, as trustee under said deed of trust, in the place and stead of the said John Lyford,
19 and decreed that all right, title, and interest of the said John Lyford in and to the premises aforesaid, under and by virtue of said deed of trust, be divested out of him and vested for the uses and purposes of said trust in your orator, George W. Dial, who has duly accepted the said trust. The said Reynolds still sets up and proclaims his said pretended title to said premises, and claims to be the owner thereof.

Amendment to supplemental bill.

Your orator shews by way of amendment, by leave of the court, that said premises were owned on and prior to the 26th day of September, 1863, by the said Robert B. Reynolds. On the said 26th day of September, 1863, a writ of attachment was duly issued from the circuit court for Knox County, Tennessee, to the sheriff of said county, in a certain suit commenced and pending in said court, wherein William G. Brownlow was plaintiff and the said Reynolds and others were defendants, against the property of said defendants; which said writ of attachment, before the return day thereof, came to the hands of said sheriff and was by him duly levied upon the estate and interest of the said Reynolds in the premises aforesaid.

Such proceedings were had in said suit that on the 24th day of February, 1865, the said William G. Brownlow recovered judgment therein against the said Reynolds and the other defendants in said suit
20 for the sum of twenty-five thousand and costs. On the 8th day of April, 1865, a writ of venditioni exponas was issued from said court upon said judgment to the sheriff of said county of Knox, commanding him to expose to public sale, as the law directs, the property levied on as aforesaid, and under and by virtue of said writ of venditioni exponas the said sheriff, on the day of , 1865, sold the said premises, according to law, at public sale, to the said William G. Brownlow. The said Brownlow afterwards assigned his interest in said premises, acquired by said sale, to the said Joseph A. Cooper; and the sheriff of Knox County afterwards, in pursuance of said sale and of said assignment, conveyed the said premises to the said Cooper by deed, duly executed by him in accordance with law, which deed is duly registered in the register's office for Knox County. Said premises have never been redeemed from said sale. Your orator is advised and charges that the proceedings under said suit and said judgment were and are legal and valid, and that the same have been so adjudged in the Supreme Court of the United States; that the said sale was lawful and valid, and that under and by virtue of said proceedings, judgment, and sale, and the said sheriff's deed, all the estate, right, title, and interest of the said
21 Reynolds in and to said premises were divested out of him and vested in said Cooper; and that the said Cooper, by the proceedings aforesaid, became the true and lawful owner of the said premises in fee-simple, which title and interest of the said Cooper has now become vested in your orator by the deed of trust and other proceedings above mentioned. Yet the said Reynolds not only sets up and claims that he is still the lawful owner of said premises, but has since the filing of the original bill in this cause brought a suit in ejectment in the circuit court for Knox County, Tennessee, against the said Joseph A. Cooper, who

holds said premises as the tenant of your orator, seeking in said suit to recover the possession of said premises from said Cooper and from your orator.

Your orators pray that the said Robert B. Reynolds and Joseph A. Cooper may be made parties defendant to this supplemental bill, and that due process of subpœna may issue from this honorable court, requiring them to answer the same as well as the matters alleged in said original bill, that your orators may have the full benefit of the said suit and proceedings against the said Reynolds and Cooper, and that they may have such and the same relief against the said Reynolds and Cooper as in and by the said original bill is prayed against them; that the title of your orator, George W. Dial, trustee as aforesaid, in and
22 to the premises aforesaid, may be set up and established; that the said Robert B. Reynolds may be decreed to have no right, title, or interest in or to the said premises; that he be forever restrained and enjoined from setting up or claiming his said pretended title to said premises; and that your orators may have such further or other relief in the premises as the nature of their case shall require and to the court shall seem meet.

GEO. ANDREWS,
L. C. HOUK,
Sol's for Compl'ts.

THO'S E. CHAMPION,
Of Counsel.

(Endorsed:) ✕ 456. Geo. W. Dial & D. H. Startsman vs. Robert B. Reynolds et al. Supplemental bill. Filed November 21st, 1871. H. M. Aiken, clerk. Amendment filed April 13th, 1872. H. M. Aiken, cl'k.

Summons.

The President of the United States of America to the marshal of the eastern district of Tennessee:

You are hereby commanded to summon Robert B. Reynolds and Joseph A. Cooper, if they be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the district of East Tennessee, at the court-house in Knoxville, in said State, on the second Monday in January next, then and there to answer the supplemental bill of complaint this day filed against them in said court by George W. Dial and Daniel H. Startsman.
23 Herein fail not, and have you then and there this writ.

Witness the honorable Salmon P. Chase, esq., Chief-Justice of the Supreme Court of the United States, this the second Monday in July, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the 96.

H. M. AIKEN, *Clerk.*

(Endorsed:) No. 456. Geo. W. Dial & D. H. Startsman vs. Rob't B. Reynolds & Joseph A. Cooper. This summons was issued on the 21 day of November, 1871. H. M. Aiken, clerk. Came to hand same day issued, and executed on J. A. Cooper, Nov. 22, 1871. S. P. Evans, U. S. M. And as to Robert B. Reynolds, December 5th, 1871, in Knox County, and leaving with him a copy of summons and copy of bill. D. M. Boyd, dept. U. S. marshal. Evans' costs, one summons, $2.00; Boyd's costs, one copy of summons, $2.00; copy of bill, $2.00; one summons, $2.00; 5 miles going, @ 6, 30c—total $8.30.

Be it remembered that at a circuit court of the United States, began and held for the eastern district of Tennessee at the court-house in Knoxville, within said district, on the second Monday, it being the 8th day of January, 1872, the following proceedings were held, to wit:

There being no judge of said court present, the court was opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

24 TUESDAY MORNING, *January* 9, 1872.

Court met pursuant to adjournment.

Present, the honorable Connally F. Trigg, judge, &c.

JOHN LYFORD ET AL. *vs.* REYNOLDS & COOPER. } Bill in equity. No. 456.

Come the defendant, Robert B. Reynolds, by his solicitor, and entered a motion to dismiss the bill in this case for want of equity upon its face.

And afterwards, at the said January 1872, of said court, the following proceedings were had:

THURSDAY MORNING, *January* 25, 1872.

Court met pursuant to adjournment.

Present, the honorable Connally F. Trigg, judge, &c.

JNO. LYFORD ET AL. *vs.* REYNOLDS & COOPER. } Bill in equity. No. 456.

Upon motion of defendant, Robert B. Reynolds, leave is granted to withdraw the motion heretofore entered in this case to dismiss the bill for want of equity upon its face and to file a demurrer, which demurrer was accordingly filed.

25 *Demurrer.*

JOHN LYFORD & OTHERS *vs.* ROBERT B. REYNOLDS & JOSEPH A. COOPER. }

And the respondent, Rob't B. Reynolds, against whom the bill in this case is filed, comes by his solicitors and says that he is not bound to answer said bill except by demurrer, and therefore he does demur to the same, and for causes of demurrer shows to the court the following:

1st. There is no equity in complainants' bill as against him.

2d. Compl'ts show no title in themselves.

3d. Compl'ts show no title in respondent requiring the intervention of this court and which they ask to be cancelled and made void or removed as a cloud upon their title.

For these and other reasons to be shown on argument, respondent prays the judgment of the court whether he shall be held to further answer the same, and that the bill be dismissed.

CROZIER & SON, *Sol's.*

We certify that the foregoing demurrer is not taken out of levity or for delay, but because it is necessary and right it should be filed, to reach the justice and equity of the case, and we believe it is well taken.

CROZIER & SON, S'ol's.

(Endorsed:) John Lyford & others vs. Reynolds & Cooper. Demurrer. Filed January 25, 1872. H. M. Aiken, cl'k.

26 Be it remembered that at a circuit court of the United States, began and held for the eastern district of Tennessee, at the court-house in Knoxville, within said district, on the second Monday, it being the 8th day of January, 1872, the following proceedings were had, to wit:

There being no judge of said court present, the court was opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

THURSDAY MORNING, *February* 15, 1872.

Court met pursuant to adjournment.
Present, the honorable Connally F. Trigg, judge, &c.

JNO. LYFORD ET AL. *vs.* REYNOLDS & COOPER. } Bill in equity. No. 456.

The demurrer of the defendant, Robert B. Reynolds, coming on to be heard, and argument of counsel being heard thereon, and the matter being fully understood by the court, it is considered by the court that the demurrer be sustained.

And thereupon, on motion of complainants, by their solicitor, two months' time is granted them in which to amend the bill in this cause, which, if not amended in said two months, shall be then dismissed and execution in favor of the defendants and against the said com-
27 plainants and their security of record may issue for the costs of this cause.

Demurrer to supplemental bill.

GEORGE W. DIAL & Co. *vs.* R. B. REYNOLDS ET AL. } Demurrer to supplemental bill.

And the respondent, Rob't B. Reynolds, against whom the supplemental bill in this case is filed, comes and says, by his solicitors, that he is not bound to answer said bill except by demurrer, and therefore he does demur to the same, and for causes of demurrer shows to the court the following:

1st. There is no equity in the complainant's bill as against him.

2d. Complainant shows no title in himself.

3d. Complainant shows no title in respondent requiring the intervention of this court, and which they ask to be cancelled and made void or removed as a cloud upon his title.

4th. That if the statements made by complainant in his bill are true he has a remedy at law, and has no right to appeal to a court of equity in his behalf.

For these and other reasons to be shown on argument, respondent prays the judgment of the court, whether he shall be held to further answer the same, and that the bill be dismissed.

We certify that the foregoing demurrer is not taken out of lenity or for delay, but because it is necessary and right it should be filed to reach the justice and equity of the case, and we believe it well
28 taken.

CROZIER & SON, COCKE & HENDERSON.
Sol's Resp't Reynolds.

(Endorsed:) Demurrer to supplemental bill of G. W. Dial, trustee, vs. Rob't B. Reynolds et al. Demurrer of Rob't B. Reynolds. Filed Sept. 16, 1872. H. M. Aiken, cl'k.

Be it remembered that at a circuit court of the United States, began and held for the eastern district of Tennessee at the court-house in Knoxville, within said district, upon the second Monday, it being the 12 day of January, 1874, the following proceedings were had, to wit:

There being no judge of said court present, the court was opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

THURSDAY MORNING, *March* 19, 1874.

Court met pursuant to adjournment.

Present, the honorable H. H. Emmons, judge of the United States circuit court for the sixth circuit, and the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

29 JOHN LYFORD & DAN'L H. STARTSMAN
vs.
ROBERT B. REYNOLDS & JOSEPH A. COOPER. } Bill in equity, No. 456.

Upon motion of complainants, by their solicitors, ten days' time is granted in which to file an amended bill in this cause.

And afterwards, at the said January term, 1874, of said court, the following proceedings were had, to wit:

THURSDAY MORNING, *March* 26, 1874.

Court met pursuant to adjournment.

Present, the honorable H. H. Emmons, judge of the United States circuit court for the sixth circuit.

JOHN LYFORD AND DAN'L H. STARTSMAN
vs.
ROB'T B. REYNOLDS & JOSEPH A. COOPER. } Bill in equity, No. 456.

Upon motion of complainants, by their solicitors, two weeks' further time is granted in which to file an amended bill in this cause.

And afterwards, at the said January term, 1874, of said court, the following proceedings were had, to wit:

THURSDAY MORNING, *April* 9, 1874.

Court met pursuant to adjournment.

Present, the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

30 JOHN LYFORD & DAN'L H. STARTSMAN
vs.
ROB'T B. REYNOLDS & JOSEPH A. COOPER. } Bill in equity, No. 456.

Upon motion of the complainants, by their solicitors, time is granted until the next term of this court in which to file an amended bill in this cause, so as not to delay.

Prosecution bond.

In the circuit court of the United States for the eastern district of Tennessee.

GEORGE W. DIAL & DANIEL H. STARTSMAN
vs.
ROBERT B. REYNOLDS ET AL.

Know all men by these presents that we, Geo. W. Dial, Daniel H. Startsman, and Jno. B. Clotworthy are held and firmly bound unto Robert B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, & Adolph Nelson, in the penal sum of two hundred and fifty dollars, to the payment whereof we bind ourselves, and each of us, and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the 13th day of July, 1874.

The condition of this bond is such that the said George W. Dial and Daniel H. Startsman have filed their amended bill in equity against

31 Now, if the said Geo. W. Dial & Daniel H. Startsman shall prosecute said suit with effect, or, in failure thereof, pay and satisfy all costs that may be adjudged against said plaintiff in said cause, or on failure of said defendant', if convicted, to pay and satisfy said costs, if the said plaintiff shall pay the same, then this bond to be void; otherwise to remain in full force and virtue.

GEO. W. DIAL. [SEAL.]
DAN'L H. STARTSMAN. [SEAL.]
JNO. B. CLOTWORTHY. [SEAL.]

Attest:
H. M. AIKEN.

(Endorsed:) No. 456. Geo. W. Dial & Dan'l H. Startsman vs. Robert B. Reynolds et al. Filed 13th day of July, 1874. H. M. Aiken, clerk.

Amended bill.

To the honorable the circuit court of the United States of America in and for the eastern district of Tennessee:

Your orators, George W. Dial and Daniel H. Startsman, citizens of the State of Ohio, come and, by leave of the court, exhibit this their amended bill in the equity side of the docket of this court against Robert B. Reynolds, Joseph A. Cooper, John Hambright, and Alfred McConnell, citizens of the eastern district and State of Tennessee, and Thomas O. Traynor, Charles Nelson, and Adolph Nelson, citizens of the State of Tennessee, complaining, show unto your honor that

32 on the 12th day of May, 1871, the def't Joseph A. Cooper was justly indebted to your orator Daniel H. Startsman one thou-

sand dollars with the interest accrued thereon, evidenced by a promissory note bearing date the 11th day of May, 1871, payable to your said orator or his order, one day after its date, which sum, with the interest thereon, is still due to your orator. Before that time said Joseph A. Cooper had been duly appointed collector of internal revenue of the United States for the 2d district of Tennessee and executed a bond in the penalty of one hundred thousand dollars, payable to the United States, to be void on condition that he faithfully executed the duties of his office, with the defendants, Thomas O. Traynor, Charles Nelson, Adolph Nelson, John Hambright, and Alfred McConnell as securities thereto; which bond is still in full force and held by the United States for the purposes for which it was executed.

And on the 12th May, 1871, aforesaid, said Cooper made, executed, and delivered his deed of that date, in and by which he conveyed to one John Lyford, then and now a citizen of Ohio, in fee-simple all that certain piece and parcel of land with the appurtenances, situated in the 12th civil district of Knox County, Tennessee, being within the limits of what is known as the Virgin Spring survey, described and
33 bounded as follows: Beginning at a stake in the south side line of the Virgin Spring survey near the Baker's Spring, being the second corner of a tract of land heretofore conveyed to Mary J. Helms; thence north sixty degrees east along said south line to the second corner of the land heretofore conveyed to Rebecca J. Reynolds; thence north thirty degrees west one hundred and sixty poles to a stake third corner of Rebecca J. Reynolds' land; thence south sixty degrees west to the third corner of the land heretofore conveyed to Mary J. Helms; thence south sixty degrees, east one hundred and sixty poles to the beginning, being a part of the tract of land formerly owned by John Reynolds, deceased, but in trust for the following purposes, that is to say:

1st. To secure the aforesaid debt due to your orator Daniel H. Startsman; and

2dly. To secure and indemnify and protect the said Thomas O. Traynor, Charles Nelson, Adolph Nelson, John Hambright, and Alfred McConnell against all costs, damages, expenses, and liability by reason or on account of their said suretyship aforesaid.

And in and by said deed it was further provided that in case said debt was not paid on or before the first day of August, 1871, or in case any liability shall be hereafter fixed and ascertained in favor of the United States against the securities above named upon the bond aforesaid, or either of them, for or on account of any default or
34 wrongful act of said Cooper as collector as aforesaid, or in case "the said securities or either shall be put to any expense, or shall be required to make any payment, or shall sustain any loss, costs, or damages on account of said suretyship," then, at the request of the said Daniel H. Startsman or his representatives, or at the request of said sureties, or either of them, said trustee shall sell said premises (after giving thirty days' notice thereof, to be posted at the court-house door in Knoxville, Tennessee) at public sale, and apply the proceeds of said sale as follows:

1st. To the payment of the expenses and costs of executing said deed.

2dsly. To the payment of the debt aforesaid due to your orator Staatsman.

3rdly. The said trustee is required to hold the surplus, if any, so long as may be necessary to indemnify and save harmless the aforesaid securties to said Cooper's official bond and apply the same, if necessary,

to the discharge of all debts, damages, costs, expenses, and liabilities that may accrue against or be sustained by said securities, or against either of them, on account or by reason of their suretyship, &c.

4th. If anything shall remain after satisfying the trusts above mentioned, the same is to be paid to said Cooper, his executors, administrators, or assigns. Said deed of trust was on the 12th day of May,
35 1871, acknowledged for registration before I. S. A. Blang, clerk of the county court of Knox County, Tennessee, and on the 13th day of said month duly registered in the proper office of said county as required by law; the original or a duly-certified copy of which will be put in evidence on the hearing of this cause. The said John Lyford, to whom said deed was made, declined to execute the bond required by law to secure the faithful execution of the trusts imposed by him by said deed, and thereupon he was, by the judgment of the county court of Knox County, Tennessee, removed, and your orator George W. Dial duly and regularly appointed trustee to execute said deed in his room and stead, and the title divested out of him and invested in your said orator, who executed and delivered the bond required by the statute in that behalf made and provided, and accepted and undertook to execute said trust.

Further complaining, your orators charge that the land in question and described in and conveyed by said deed in trust from the said Cooper to the said Lyford, belonged in fee to one Robert B. Reynolds, and that at an execution sale thereof, duly and regularly made, *made* in 186 , his title was divested out of him and vested in fee in the said Joseph A. Cooper, who entered under color of his said title into the possession of said premises, in 186 , and has continued to possess,
36 occupy, and hold the same from that time to the present, and to appropriate the rents and profits thereof to himself to the exclusion of the said Robert B. Reynolds, and all other persons, but in subordination to the title of your orator, acquired under the deed of trust from Cooper to Lyford, and the decree of said county court of Knox County, removing Lyford and divesting him of the title and the appointment of your said orator in his place and vesting him with the title to the said land under said deed in trust and aforesaid decree divesting and investing title. Complainants charge that your orator Dial is seized in fee of said tract of land in trust for the benefit of your orator Startsman and the other cestuis que trust hereinbefore named. But the said Reynolds denies the validity of said execution sale, and alleges that he was not thereby divested of his title in and to said premises. He brought, about the 9th of April, 1866, a suit in ejectment in this court, he then being, as he alleged, a citizen of another State, against said Cooper, with a view of testing the legal sufficiency of the judgment, execution, and sale under which said Cooper claimed and prosecuted the same to a trial in this court, and on the trial so had this court held that he (the said Reynolds) was not legally divested of his title, and under this holding a verdict and judgment were rendered in his favor; but on a writ of error duly taken the judgment of this court in
37 said cause was reversed by the Supreme Court of the United States and a decision delivered declaring that said judgment, execution, and sale under which defendant Cooper claims title were regular and valid, and did divest title out of Reynolds and vest the same in Cooper. Thereupon the said Reynolds dismissed his suit in this court and in 1871 began an ejectment against the defendant Cooper in the circuit court for Knox County, Tennessee, in which he is seeking to obtain a contrary decision and recover possession of said premises. His

claim of title and suit constitute a cloud on the title of your orator Dial, and will so embarrass his title as to prevent your orator (who is required by his co-complainant to proceed and sell said land in pursuance of the provisions of said deed in trust) from selling the same, except for a sum ruinously below its real and current market value, to the irremediable injury to said cestuis que trust, while your orators have no legal right to interfere and assert their rights in the premises and protect themselves against injustice arising from the want of diligence and ability in defending said action, or any erroneous decision that may be rendered therein.

Being remediless in the premises, save in this honorable court of chancery, your orators pray that the defendants, Robert B. Reynolds, Joseph A. Cooper, John Hambright, and Alfred McConnell, who are citizens of the State and eastern district of Tennessee, Thomas O. Traynor, Charles Nelson, and Adolph Nelson, citizens of Davidson County, Tennessee, be made defendants to this bill by due process of law, in accordance with the law and practice of this court, and that they be required to appear and answer all the facts and allegations contained therein, on the corporal oaths, in as full and ample *and ample* a manner as if they were here again repeat*eated*, and they, and each of them, interrogated in relation thereto. And your orators pray for a decree ascertaining the amount due from said Cooper to your orator Startsman, and declaring the rights of the several parties to this suit in and to said land, and foreclosing said deed in trust and ordering a sale thereof under the direction of this court for the satisfaction of your said orator's debt; and for a decree removing the cloud upon your orator Dial's title to said land, and for an injunction to restrain the def't Rob't B. Reynolds from further prosecuting his said suit in ejectment begun by him in the circuit court for Knox County, Tennessee, until the further order of this court; and for all such other further orders and decrees in the premises as the equity of complainants' case shall and may require. And as in duty bound your orators will ever pray, &c.

38

39 This is the first application for an injunction in this case.

ANDREWS, WASHBURNE & HOUK, AND
BAXTER & SON,

Att'ys for Complainants.

(Endorsed:) No. 456. Geo. W. Dial and Daniel H. Startsman vs. Robert B. Reynolds et al. Amended bill. Filed 13th day of July, 1874. H. M. Aiken clerk.

Subpœna to answer.

UNITED STATES OF AMERICA,
Eastern District of Tennessee, ss:

The United States of America to Robert B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, and Adolph Nelson, greeting:

We command you, and every of you, that you appear before our judge of our circuit court of the United States of America for the eastern district of Tennessee, at Knoxville, in said district, on the seventh day of September next, that being the rule-day to which this writ of subpœna is returnable, to answer the amended bill of complaint of George W. Dial and Daniel H. Startsman, this day filed in the clerk's office of said court, in said city of Knoxville, then and there to receive and abide by

such judgment and decree as shall then or thereafter be entered [illegible] pain of judgment being pronounced against [illegible]

40 To the marshal of the eastern district of [illegible]

Witness the honorable Morrison R. Waite, [illegible] Supreme Court of the United States of America, at Knoxville, [illegible] this 15th day of July, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the 99.

H. M. AIKEN, Clerk.

Memorandum.—The above-named defendants are hereby [illegible] unless they enter their appearance in the clerk's office of said court at Knoxville aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

H. M. AIKEN, Clerk.

(Endorsed:) No. 456. Circuit court United States, eastern district of Tennessee. Geo. W. Dial & Dan'l H. Startsman vs. Rob't B. Reynolds et al. Chancery subpœna. Returnable to rule-day in September, A. D. 1874. H. M. Aiken, cl'k. Issued July 15, A. D. 1874. H. M. Aiken, clerk. Came to hand same day. Issued & executed same day, as commanded, on R. B. Reynolds, & copy of this writ & copy of complaint left with him same day. S. P. Evans, U. S. M. Costs, Clerk, S. P. Evans, one summons $2.00; one copy of declaration, $2.00; total, $4.00.

41 Be it remembered that at a circuit court of the United States begun and held for the eastern district of Tennessee, at the court-house in the city of Knoxville, within said district, upon the second Monday, it being the 13th day of July, 1874—

Present and presiding, the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee—

The following proceedings were had, to wit:

THURSDAY MORNING, *July* 23, 1874.

Court met pursuant to adjournment.

Present and presiding, the honorable Connally F. Trigg, judge of the district court for the districts of Tennessee.

GEO. W. DIAL & DAN'L H. STARTSMAN
vs.
ROBERT B. REYNOLDS ET AL. } Bill in equity, No. 456.

Came the defendant Robert B. Reynolds, by W. J. Hicks, esq., his solicitor, and enters his appearance to the amended bill in this cause, and thereupon demurrer to said amended bill was filed by said defendant.

Demurrer.

In the circuit court of the United States for the eastern district of Tennessee.

GEO. W. DIAL AND DANIEL H. STARTSMAN
vs.
42 ROBERT B. REYNOLDS AND OTHERS.

The separate demurrer of Rob't B. Reynolds to the bill of complaint filed in the above-named cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill to be true, in manner and form as the same are therein set forth and alleged, demurs to said bill, and for causes of demurrer thereto, shows:

1st. The complainants' said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give the complainants any relief as against this defendant.

2d. This court has no jurisdiction to enjoin this defendant from prosecuting his action of ejectment mentioned in said bill, and to settle the question of title to the land sued for in said action of ejectment.

3d. If this court had jurisdiction to enjoin this defendant from prosecuting said action of ejectment and compel this defendant to litigate his title to said land in this court, the complainants have shown no ground upon which they are entitled to invoke the aid of this court for that purpose.

4th. The alleged proceeding in the county court did not clothe said Dial with the legal title to said land, the county court not having jurisdiction to divest and vest title to said land.

43 5th. The bill is multifarious; the relief sought against the other parties, who are made co-defendants with this defendant, being upon matters wholly distinct from the claim of title of this defendant to said land and his said action of ejectment upon the same, and being matters with which this defendant has no connection whatever.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant demurs to said bill, and prays the judgment of this honorable court whether he shall be compelled to make any other or further answer thereto; and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

CROZIER, HENDERSON,
CALDWELL & WASHINGTON,
BROWN & HICKS,
Sol's.

I certify that in my opinion the foregoing demurrer of Rob't B. Reynolds is well founded in law, and proper to be filed in the above-named cause.

W. J. HICKS,
Sol. and of Counsel for R. B. Reynolds.

(Endorsed:) No. 456. Demurrer. Geo. W. Dial & Dale vs. Rob't B. Reynolds et als. Filed July 23, 1874. H. M. Aiken, clerk.

44 Be it remembered that at a circuit court of the United States, began and held for the eastern district of Tennessee, at the Federal court-rooms in Knoxville, within the sixth circuit and in said district, upon the second Monday, it being the 11th day of January, 1875, the following proceedings were had, to wit, there being no judge of the said court present, the court was regularly opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

MONDAY MORNING, *February* 22, 1875.

Court met pursuant to adjournment.

Present and presiding, the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

GEO. W. DIAL & DAN'L H. STARTSMAN
vs.
ROB'T B. REYNOLDS AND OTHERS.
} Bill in equity, No. 456.

This cause came on to be heard before the honorable C. F. Trigg, judge, &c., this 22d day of February, 1875, on the original and supplemental and amended bills, and the demurrers of Rob't B. Reynolds thereto.

And the court being of opinion that said demurrers are well taken, the same are sustained.

45 It is therefore decreed that said several bills be dismissed, and that Rob't B. Reynolds and Joseph A. Cooper, the defendants in said original and supplemental bills, recover of John H. Lyford and Daniel H. Startsman, complainants in said original bill, and Sam'l L. Gilson, their surety for the prosecution thereof, the costs of said original bill; and from George W. Dial and Daniel H. Startsman, the complainants in said supplemental bill, and Sam'l L. Gilson, their surety for the prosecution thereof, the costs of said supplemental bill; for all of which execution is awarded; and that Rob't B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, and Adolph Nelson, the defendants in said amended bill, recover of said Geo. W. Dial and Dan'l H. Startsman, the complainants in said amended bill, and John B. Clotworthy, their surety for the prosecution thereof, the costs of said amended bill, and that execution issue for the same.

And thereupon the complainants, Geo. W. Dial and Daniel H. Startsman, pray an appeal from this decree and from the former decrees in this cause to the next term of the Supreme Court of the United States, to be held at Washington; and it appearing to the court that the said complainants have given bond, with good and sufficient security,

46 to prosecute their said appeal with effect, and to answer all damages and costs in case they shall fail to do so, and the matter in dispute in this cause exceeds the sum of two thousand dollars, it is ordered that said appeal be and the same is hereby granted.

Appeal-bond.

Know all men by these presents that we, George W. Dial, Daniel H. Startsman, William G. Brownlow, and Samuel L. Gilson, are held and firmly bound unto Robert B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, and Adolph Nelson in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Robert B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, and Adolph Nelson, or to their certain attorney, heirs, executors, administrators, orassigns; to which payment, well and truly to be made, we bind ourselves, heirs, executors, and administrators, and each and every of them, firmly by these presents, sealed with our seals, dated the 22d day of Feb'y, (1875,) one thousand eight hundred and seventy-five.

The condition of this obligation is such that whereas the above-named George W. Dial and Daniel H. Startsman have prayed an appeal from the decree this day made and entered in the circuit court of

47 the United States for the district of East Tennessee in a certain cause therein pending in equity, in which the said George W. Dial and Daniel H. Starteman are complainants, and the said Robert

B. Reynolds, Joseph A. Cooper, John Hambright, Alfred McConnell, Thomas O. Traynor, Charles Nelson, and Adolph Nelson are defendants, to the next term of the Supreme Court of the United States, at Washington, to reverse the said decree: Now, therefore, the condition of this obligation is such that if the above-named George W. Dial and Daniel H. Startsman shall prosecute his said appeal to effect, and answer all costs and damages if they shall fail to make good their plea and appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

GEO. W. DIAL. [L. S.]
By GEO. ANDREWS, *Att'y.*
DANIEL H. STARTSMAN, [L. S.]
By GEO. ANDREWS, *Att'y.*
W. G. BROWNLOW. [L. S.]
S. L. GILSON. [L. S.]

Approved.

CONNALLY F. TRIGG,
U. S. District Judge, Presiding.

(Endorsed:) Bond filed February 22d, 1875. H. M. Aiken, clerk.

DISTRICT OF EAST TENNESSEE, *ss:*

I, H. M. Aiken, clerk of the United States circuit court for said
48 district, do hereby certify that the above and foregoing are full, true, and perfect copies of the record and proceedings in the above-entitled cause, as the same appear on file and of record in said court.

Given under my hand and the seal of said court at Knoxville this 10th day of June, 1875.

[SEAL.] H. M. AIKEN, *Clerk.*

(Indorsement on cover:) No. 148. George W. Dial and Daniel H. Staatsman, appellants, vs. Robert B. Reynolds, Joseph A. Cooper, John Hambright, et al. E. Tennessee C. C. U. S. Filed 2nd October, 1875.